

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DANIEL HORACEK,

Case No. 07-13822

Plaintiff,

Avern Cohn

vs.

United States District Judge

DERRICK WILSON, *et al*,

Michael Hluchaniuk

Defendants.

United States Magistrate Judge

REPORT AND RECOMMENDATION
MOTION FOR DEFAULT JUDGMENT (Dkt. 109)

This matter involves civil rights claims asserted by plaintiff, a prisoner in the custody of the State of Michigan against defendants, who are various employees and contractors of the Oakland County Sheriff's Department and Jail. (Dkt. 1). Plaintiff's pending claims involve religious-based food service issues. *Id.* District Judge Avern Cohn referred this matter to Magistrate Judge Paul J. Komives for all pretrial purposes on September 20, 2007. (Dkt. 7). This matter was reassigned to the undersigned on January 14, 2008. (Dkt. 17).

According to the docket in this case, defendant Derrick Wilson was personally served by the United States Marshals Service on July 9, 2008. (Dkt. 57). The docket also reflects that the clerk entered a default as to defendant Wilson on March 31, 2009. (Dkt. 106). Approximately one month later, defendant Wilson moved to set aside the entry of default. (Dkt. 119). The undersigned issued an

order on April 1, 2010 setting aside the clerk's entry of default based on defendant Wilson's showing of good cause. (Dkt.137). The undersigned **RECOMMENDS** that plaintiff's motion for entry of default judgment be **DENIED** as moot, given that no default is currently entered against defendant Wilson, which is required before default judgment may enter, in accordance with Federal Rule of Civil Procedure 55.

The parties to this action may object to and seek review of this Report and Recommendation, but are required to file any objections within 14 days of service, as provided for in Federal Rule of Civil Procedure 72(b)(2) and Local Rule 72.1(d). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985); *Howard v. Sec'y of Health and Human Servs.*, 932 F.2d 505 (6th Cir. 1981). Filing objections that raise some issues but fail to raise others with specificity will not preserve all the objections a party might have to this Report and Recommendation. *Willis v. Sec'y of Health and Human Servs.*, 931 F.2d 390, 401 (6th Cir. 1991); *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Pursuant to Local Rule 72.1(d)(2), any objections must be served on this Magistrate Judge.

Any objections must be labeled as "Objection No. 1," "Objection No. 2," etc. Any objection must recite precisely the provision of this Report and Recommendation to which it pertains. Not later than 14 days after service of an

objection, the opposing party may file a concise response proportionate to the objections in length and complexity. Fed.R.Civ.P. 72(b)(2), Local Rule 72.1(d). The response must specifically address each issue raised in the objections, in the same order, and labeled as “Response to Objection No. 1,” “Response to Objection No. 2,” etc. If the Court determines that any objections are without merit, it may rule without awaiting the response.

Date: April 1, 2010

s/Michael Hluchaniuk
Michael Hluchaniuk
United States Magistrate Judge

CERTIFICATE OF SERVICE

I certify that on April 1, 2010, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system, which will send electronic notification to the following: Dennis D. Alberts, Michael A. Ross, Rick J. Patterson, and Steven M. Potter, and I certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: Daniel Horacek, # 165458, OAKLAND COUNTY JAIL, 1201 N. Telegraph Road, Pontiac, MI 48343.

s/Tammy Hallwood
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